

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Joint Application of Wisconsin Electric Power Company
and Wisconsin Gas, LLC, both d/b/a We Energies, for
Authority to Adjust Electric, Natural Gas, and Steam Rates

Docket No. 05-UR-105

MOTION OF RENEW WISCONSIN FOR INTERLOCUTORY REVIEW

Pursuant to Wis. Admin. Code § PSC 2.27,¹ RENEW Wisconsin (“RENEW”) hereby respectfully files this motion for interlocutory review in the above-referenced docket before the Public Service Commission of Wisconsin (“Commission”). For the reasons stated herein, RENEW respectfully requests that the Commission reverse the decisions of the Administrative Law Judge (“ALJ”) made during the technical hearing in this docket held on August 24, 2011 in which the ALJ erroneously issued rulings (1) excluding the testimony of RENEW Executive Director Michael Vickerman from the record and (2) refusing to admit into the record comments previously filed by RENEW. The grounds for this motion are stated below.

I. THE COMMISSION SHOULD REVERSE THE DECISIONS OF THE ALJ EXCLUDING THE TESTIMONY AND COMMENTS OF RENEW FROM THE RECORD IN THIS PROCEEDING.

At the technical hearing held in this proceeding on August 24, 2011, RENEW offered two items for inclusion in the record: (1) the Direct Testimony of Michael Vickerman² and (2) the Comments of RENEW Wisconsin³ submitted in response to the Notice of Proceeding and Request for Comments in this docket.⁴ Wisconsin Electric Power Company (“WEPCO”)

¹ Wis. Admin. Code § PSC 2.27(1) provides that the Commission may review any ruling or order issued by the ALJ if the Commission finds “that to do so would further the proper disposition of the proceeding.”

² (PSC REF# 152074, 152075, 152077, 152078, 152079, 152080) (August 22, 2011).

³ (PSC REF# 150864, 150865, 150866, 150867) (July 15, 2011).

⁴ (PSC REF# 149190) (June 8, 2011).

objected to both requests on the basis that suspension of the WEPCO renewable energy program, as discussed in the testimony and comments of RENEW, is not an issue in this proceeding.

The ALJ erroneously denied both requests. The Commission should reverse the decisions of the ALJ for the following reasons. First, suspension of the WEPCO renewable energy program is included in the application by WEPCO in this proceeding and this program would clearly be affected by a Commission decision in this proceeding. The status of this program for 2012 is therefore a clear and integral part of the issues to be decided in this proceeding. Second, the ALJ decision is inconsistent with longstanding Commission policy to allow for the full development of the record to further the full consideration by the Commission of the issues in a proceeding.

A. Suspension of the WEPCO Renewable Energy Program is an Issue to be Decided by the Commission in this Proceeding.

In this proceeding, WEPCO proposes to avoid a full rate case for the 2012 test year by deferring certain costs and suspending amortization of certain expenses during the test year.⁵ One of the expenses WEPCO proposes to suspend amortization for is its renewable energy program.⁶ That program was established through the final decision of the Commission in the WEPCO “Power to Future” (“PTF”) coal plant proceeding, in which WEPCO agreed to two renewable energy commitments: (1) to obtain five percent of its energy from renewable resources by 2011 and (2) to spend \$6 million for ten years “on emerging technologies and activities, to encourage the development of renewable resources.”⁷

⁵ See Application Letter (May 26, 2011) (PSC REF# 148550).

⁶ See Exhibit 1.3 (DJA), Schedule 2, Page 7 and Schedule 4, Page 7 (May 26, 2011) (PSC REF# 148556); *see also* Ackerman Direct at p.5, l.17 through p.6, l.2 (PSC REF# 148682).

⁷ Final Decision at 18, Docket No. 05-CE-130 (Nov. 11, 2003) (PSC REF# 86450).

[***BEGIN CONFIDENTIAL***]

[***END CONFIDENTIAL***]

Although the WEPCO proposal appears merely as a temporary suspension of the program for the test year, the intent of WEPCO appears to be the complete termination of its renewable energy program. WEPCO made that intent clear through its announcement in May terminating the program.¹⁰ The Commission should not allow WEPCO to unilaterally suspend for 2012 or terminate an obligation that formed a fundamental part of Commission approval of the PTF project without the opportunity for further development of the record.

The status of the WEPCO renewable energy program in 2012 is clearly an issue in this proceeding. WEPCO itself made it an issue by proposing to suspend funding for the program in

⁸ See Vickerman Aff. to RENEW Comments ¶ 6, Ex. B.

⁹ *Id.* at ¶ 2.

¹⁰ See Vickerman Aff. to RENEW Comments ¶ 5, Ex. A (PSC REF# 150866, 150867) (July 15, 2011).

its application. RENEW opposes this suspension. The ALJ was therefore in error in denying the requests by RENEW to enter testimony and comments on the program into the record.

B. Exclusion of the RENEW Testimony and Comments is Inconsistent with Longstanding Commission Policy and Effectively Results in the Suppression of Evidence in this Proceeding.

Upholding the decisions by the ALJ would signal a substantial departure by the Commission from past policy favoring the full development of the record in proceedings. PSC 2.27 allows the Commission to review an ALJ decision where “to do so would further the proper disposition of the proceeding.” That broad authority is consistent with Commission policy to allow the presentation of all material relevant to the proceeding so that the Commission can fully consider the record before issuing a decision. The ALJ decision in this proceeding was an arbitrary decision that deprives the Commission of the opportunity to hear arguments on both sides to determine what WEPCO is proposing to accomplish with its renewable energy program through this proceeding.

The Commission should protect a policy of openness and full disclosure that allows parties to present all relevant evidence in a proceeding. The Commission should also reassure Wisconsin businesses that it does not support a perceived series of anti-renewable energy policies that has infiltrated our state over the past year. Authorizing WEPCO to suspend its renewable energy program in 2012 without allowing RENEW and other interested parties to be heard would send a strong signal that Wisconsin disfavors renewable energy development.

The WEPCO renewable energy program is an important source of renewable energy development and innovation throughout its service territory, providing support for customer-sited renewable energy installations, conferences and workshops, research and development

activities, and innovative buyback rates.¹¹ Suspension of the program in 2012 would be a severe blow to local contractors and businesses that rely on the program to create jobs and clean energy. WEPCO customers and RENEW members deserve the opportunity to more fully develop the issues surrounding program suspension.

Perhaps most significantly, the WEPCO program offered support for nonprofit customers seeking to install renewable energy systems. This support supplemented Focus on Energy grants and cash-back awards. It was designed to overcome the inability of these nonprofit entities to capture federal renewable energy tax credits to offset their own system acquisition costs. Beneficiaries of this program include the City of Brookfield, Gateway Technical College, Habitat for Humanity, the Johnson Foundation, Lakeshore Technical College, Milwaukee Area Technical College, Milwaukee Central Library, Milwaukee County Zoo, Milwaukee Metropolitan Sewerage District, the City of Racine, the Shorewood School District, and the Wauwatosa Fire Department, among many others.¹²

Support of solar energy, including solar hot water systems, by WEPCO helped foster the convergence of a solar industry cluster in southeast Wisconsin consisting of such companies as Helios USA, Johnson Controls, Caleffi Solar, Hot Water Products, and Sunvest. These businesses, and the customers they serve, would suffer substantial setback if the Commission allows WEPCO to suspend its renewable energy program in 2012.

Accordingly, inclusion of the RENEW testimony and comments would further the proper disposition of this proceeding, demonstrate a continued Commission policy of openness to the full development of the record, and support Wisconsin businesses, nonprofit organizations, and municipalities that benefit from this program.

¹¹ Vickerman Aff. to RENEW Comments ¶ 7, Ex. C.

¹² *Id.*

II. CONCLUSION.

For the reasons stated herein, RENEW respectfully requests that the Commission overturn the decisions of the ALJ excluding the testimony and comments of RENEW from the record, and grant the requests of RENEW to include its testimony and comments in the record.

Dated this 25th day of August, 2011.

Respectfully submitted,

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